

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

SNOWTREE ENTERPRISES, LLC,

Plaintiff,

v.

SLENDER LADY, INC.,

Defendant.

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Civil Action No. 05-010341-JLT

**DEFENDANT'S MOTION TO DISMISS
AND FOR SANCTIONS**

Slender Lady, Inc. ("Slender Lady") hereby moves to dismiss the Complaint filed by Plaintiff Snowtree Enterprises, LLC's ("Snowtree"). In support of this motion, Slender Lady refers to and incorporates its Memorandum of Law, submitted herewith.

As noted in the Complaint, this action concerns the parties' compliance with the terms of a Franchise Agreement (the "Agreement"). The Agreement contains an extremely broad and comprehensive arbitration provision, whereby the parties expressly waived their rights to a trial in a court of law and affirmatively agreed to mediate and/or arbitrate all claims arising out of or in any way related to the Agreement. This suit contravenes the express terms of the Agreement's mandatory arbitration provision. The Complaint must therefore be dismissed.

Request for Sanctions

Slender Lady is seeking sanctions in connection with this motion. Sanctions are appropriate in this instance because of the clear language of the mandatory arbitration provision in the Agreement and the overwhelming case law requiring arbitration of claims. Moreover, Slender Lady specifically informed Snowtree that this litigation was improper under the express

terms of the arbitration provision, and warned that it would seek sanctions if Snowtree refused to submit this dispute to arbitration in accordance with the Agreement.

Conclusion

WHEREFORE, for the foregoing reasons, Slender Lady respectfully request that the Court order as follows:

- (1) grant its motion to dismiss, and dismiss the Complaint, or, in the alternative, stay this litigation pending a final resolution of this dispute by mediation and/or arbitration, in accordance with the Agreement;
- (2) order that, if the parties are to mediate and/or arbitrate the current dispute, the mediation and/or arbitration must take place at Slender Lady's headquarters in San Antonio, Texas, in accordance with the Agreement;
- (3) impose sanctions against Snowtree and order that Snowtree reimburse Slender Lady for the attorneys' fees and costs that Slender Lady has incurred in responding to the Complaint; and
- (4) order such other relief as is just and proper.

SLENDER LADY, INC.,

By its counsel,

Dated: March 9, 2005

/s/ Jason W. Morgan
Jason W. Morgan (BBO #633802)
jmorgan@dhtmlaw.com
Michael D. Williams (BBO #654149)
mwilliams@dhtmlaw.com
Drohan, Hughes, Tocchio & Morgan, P.C.
175 Derby Street, Suite 30
Hingham, MA 02043
Tel.: (781) 749-7200
Fax: (781) 740-4335

CERTIFICATE OF SERVICE

I, Michael D. Williams, hereby certify that, on March 9, 2005, I served a true and correct copy of the foregoing, by first-class U.S. mail, to counsel for Plaintiff, Louis M. Ciavarra, Esq., Bowditch & Dewey, LLP, 311 Main Street, Worcester, Massachusetts 01601.

/s/ Michael D. Williams
Michael D. Williams

LOCAL RULE 7.1(A)(2) CERTIFICATION OF COUNSEL

I, Michael D. Williams, hereby certify that, on several occasions, during the first two weeks of March 2005, I spoke with counsel for Plaintiff, Louis M. Ciavarra Esq., in a good faith attempt to narrow the issues presented herein.

/s/ Michael D. Williams
Michael D. Williams